CALIFORNIA CODE OF REGULATIONS

Title 10, Chapter 5, Subchapter 2 Policy Forms and Other Documents
Article 2.2. Limits on Benefit Reductions in Group Disability Income Insurance Policies

§2232.45.1. Authority and Purpose.

This article is promulgated pursuant to the authority granted to the Insurance Commissioner by section 790.10 of the Insurance Code. The purpose of this article is to set forth uniform standards which prohibit certain benefit reduction provisions in group disability income insurance policies. The article also clarifies an insurer's duty of good faith and fair dealing in estimating earnings received by the insured for work performed while disabled. This article applies to all insurers authorized to transact disability insurance in this State.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code.

§2232.45.2. Benefit Reductions Shall Not Be Based on Involuntary Retirement.

A policy of group disability income insurance which is subject to approval under the California Insurance Code shall not contain any provision that permits the insurer to estimate the amount of the following benefits the insured would receive if the insured retired, and deduct said estimated amounts from the benefits payable to the insured under the policy, when the insured has not voluntarily retired:

(a) Social security normal retirement age benefits;

(b) Public disability retirement benefits;

(c) Private disability retirement benefits;

(d) Public normal retirement age benefits;

(e) Private normal retirement age benefits.

Nothing in this section prohibits an insurer from deducting the amount of a benefit listed above, to the extent the benefit is deductible under existing law, when the benefit has been received by the insured as a result of the insured's voluntary retirement.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Kalvinskas v. California Institute of Technology* (9th Cir. 1996) 96 F.3d 1305; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566; *Smith v. Alum Rock Union Elementary School District* (1992) 6 Cal. App.4th 1651.

§2232.45.3. Benefit Reductions Shall Not Be Based on Estimated Workers' Compensation Temporary Disability Benefits Not Actually Received by the Insured.

A policy of group disability income insurance which is subject to approval under the California Insurance Code shall not contain any provision that permits the insurer to estimate the amount of workers' compensation temporary disability benefits the insured would receive, but has not actually received, and deduct said estimated amounts from the benefits payable to the insured under the policy.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Silberg v. Cal. Life Ins. Co.* (1974) 11 Cal. 3d 452.

§2232.45.4. Benefit Reductions Shall Not Be Based on Workers' Compensation Permanent Disability.

A policy of group disability income insurance which is subject to approval under the California Insurance Code shall not contain any provision that permits the insurer to reduce benefits by deducting for workers' compensation permanent disability benefits.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Erreca v. Western States Life Insurance Co.* (1942) 19 Cal.2d 388; *Russell v. Bankers Life Co.* (1975) 46 Cal. App.3d 405; *Canova v. N.L.R.B.*(1983) 708 F.2d 1498.

§2232.45.5. Benefit Reductions Based on Earnings Received for Work Performed While Disabled. An insurer has a duty of good faith and fair dealing, which includes a duty not to unreasonably withhold payments due under a policy. An insurer shall not estimate the earnings received by the certificate holder for work performed while the certificate holder is disabled, and deduct said estimated earnings from the benefit amount due to the certificate holder under a group disability income insurance policy, unless there is a good faith reasonable basis for the calculation of the amount of estimated earnings.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566.

Title 10, Chapter 5, Subchapter 3 Insurers, Article 12. Disability Insurance Advertisements

2536.2. Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

(a) Deceptive Words, Phrases or Illustrations Prohibited.

(1) No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

GUIDELINE 2536.2(a)(1)

This section prohibits words, phrases or illustrations which create deception to the reader by omission or commission. The following examples are illustrations of the prohibitions created by the Subsection:

1. An advertisement which describes any benefits that vary by age must disclose that fact.

2. An advertisement which uses a phrase such as "no age limit," if benefits or premiums vary by age or if age is an underwriting factor, must disclose that fact.

3. Advertisements, applications, requests for additional information and similar materials are unacceptable if they state or imply that the recipient has been individually selected to be offered insurance or has had his eligibility for such insurance individually determined in advance, when the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.

4. Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population or that a particular segment of the population are acceptable risks, when such distinctions are not maintained in the issuance of policies, are not acceptable.

5. Advertisements for group or franchise group plans which provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless such is the fact.

6. It is unacceptable to use terms such as "enroll" or "join" to imply group or blanket insurance coverage when such is not the fact.

7. Any advertisement which contains statements such as "anyone can apply" or "anyone can join," other than with respect to a guaranteed issue policy for which administrative procedures exist to assure that the policy is issued within a reasonable period of time after the application is received by the insurer, is unacceptable.

8. An advertisement which states or implies immediate coverage or guaranteed issuance of a policy is unacceptable unless suitable administrative procedures exist so that the policy is issued within a reasonable period of time after the application is received by the insurer.

9. Any advertisement which uses any phrase or term such as "here is all you do to apply," "simply" or "merely" to refer to the act of applying for a policy which is not a guaranteed issue policy is unacceptable unless it refers to the fact that the application is subject to acceptance or approval by the insurer.

10. Applications, request forms for additional information and similar related materials are unacceptable if they resemble paper currency, bonds, stock certificates, etc.

11. No advertisement shall employ devices which are designed to create undue fear or anxiety in the minds of those to whom they are directed. Unacceptable examples of such devices are:

a) The use of phrases such as "cancer kills somebody every two minutes" and "total number of accidents" without reference to the total population from which such statistics are drawn. (As an example of a permissible device, data prepared by the American Cancer Society are acceptable provided their source is noted and they are not over-emphasized);

b) The use of phrases such as "the finest kind of treatment," implying that such treatment would be unavailable without insurance;

c) The reproduction of newspaper articles, etc., containing irrelevant facts and figures;

d) The use of illustrations which unduly emphasize automobile accidents, cripples or persons confined to beds who are in obvious distress or receiving hospital or medical bills or persons being evicted from their homes due to their hospital bills;

e) The use of phrases such as "financial disaster," "financial distress," "financial shock," or other phrases implying that financial ruin is likely without insurance where used in an advertisement which comes within Section 2536.2(a)(7) relating to policies covering specified illnesses or specified accidents only.

12. An advertisement which uses the word "plan" without identifying it as an "insurance plan" is not permissible.

13. An advertisement which implies in any manner that the prospective insured may realize a profit from obtaining hospital, medical or surgical insurance coverage is not acceptable.

14. An advertisement shall not state or imply by word, phrase or illustration that the benefits being offered will supplement any other insurance policy, insurance-type concept, or governmental plan if such is not the fact.

15. An advertisement of a hospital or other similar facility confinement benefit that makes reference to the benefit being paid directly to the policyholders is misleading unless, in making such a reference, the advertisement includes a statement that the benefits may be paid directly to the hospital or other health care facility if an assignment of benefits is made by the policyholders. An advertisement of medical and surgical expense benefits shall comply with this rule in regard to the disclosure of assignments of benefits to providers of services. Phrases such as "you collect," "you get paid," "pays you," or other words or phrases of similar import are acceptable so long as the advertisement indicates that benefits are payable to the insured or someone designated by the insured.

16. An advertisement which refers to "hospitalizations for injury or sickness" omitting the word "covered" when the policy excludes certain sicknesses or injuries is unacceptable. Continued reference to "covered injury or sickness" is not necessary where this fact has been prominently disclosed in the advertisement and where the description of sicknesses or injuries not covered is prominently set forth.

17. An advertisement which refers to "whenever you are hospitalized" or "while you are confined in the hospital" omitting the phrase "for covered injury or sickness," if the policy excludes certain injuries or sickness, is unacceptable. Continued reference to "covered injury or sickness" is not necessary where this fact has been prominently disclosed in the advertisement and where the description of sickness or injuries not covered is prominently set forth.

18. Advertisements which state that benefits are provided when "you" go to the hospital" are unacceptable unless the advertisement clearly sets forth the extent of the coverage.

19. An advertisement which fails to disclose that the definition of "hospital" does not include a nursing home, convalescent home or extended care facility, as the case may be, is unacceptable.

20. An advertisement which fails to disclose any waiting or elimination periods for specific benefits is unacceptable.

21. An advertisement for a limited policy, or a hospital indemnity policy, or a plan of insurance which covers only certain causes of loss (such as dread disease) or which covers only a certain type of loss (such as hospital confinement) is unacceptable if:

a) the advertisement refers to a total benefit maximum limit payable under the policy in any headline, lead-in or caption without also in the same headline, lead-in or caption specifying the applicable daily limits and other internal limits;

b) the advertisement states any total benefit limit without stating the periodic benefit payment, if any, and the length of time the periodic benefit would be payable to reach the total benefit limit;

c) the advertisement prominently displays a total benefit limit which would not, as a general rule, be payable under an average claim.

22. Advertisements which emphasize total amounts payable under hospital, medical or surgical coverage or other benefits in a policy, such as benefits for private duty nursing, are unacceptable unless the actual amounts payable per day for such indemnity or benefits are stated.

23. Examples of what benefits may be paid under a policy shall not disclose only maximum benefits unless such maximum benefits are paid for loss from common and probable illnesses or accidents rather than exceptional or rare illnesses or accidents or periods of confinement for such exceptional or rare accidents or illnesses.

24. When a range of benefit levels is set forth in an advertisement, it must be made clear that the insured will receive only the benefit level written or printed in the policy selected and issued. Language which implies that the insured may select the benefit level at the time of filing claims is unacceptable.

25. Language which implies that the amount of benefits payable under a loss-of-time policy may be increased at the time of claim or disability according to the needs of the insured is unacceptable.

26. An advertisement for loss-of-time coverage which is an invitation to contract and which sets forth a range of amounts of benefit levels is unacceptable unless it also states that eligibility for the benefits is based upon condition of health, income, other economic conditions, or other underwriting standards of the insurer if such is the fact.

27. The term "confining sickness" is an abbreviated expression and must be explained in an advertisement containing the term. Such an explanation might be as follows: "Benefits are payable for total disability due to confining sickness only so long as the insured is necessarily confined indoors." Captions such as "Lifetime Sickness Benefits" or "Five-Year Sickness Benefits" are incomplete if such benefits are subject to confinement requirements. When sickness benefits are subject to confinement requirements, captions such as "Lifetime House Confining Sickness Benefits" or "Five Year House Confining Sickness Benefits" would be permissible.

28. Advertisements for policies whose premiums are modest because of their limited coverage or limited amount of benefits shall not describe premiums as "low," "low cost," "budget" or use qualifying words of similar import. This rule also prohibits the use of words such as "only" and "just" in conjunction with statements of premium amounts when used to imply a bargain.

29. Advertisements which state or imply that premiums will not be changed in the future are not acceptable unless the advertised policies so provide.

30. An advertisement which does not require the premium to accompany the application must not over-emphasize the fact and must make the effective date of the coverage clear.

31. An advertisement which exaggerates the effect of statutorily mandated benefits or required policy provisions or which implies that such provisions are unique to the advertised policy is unacceptable. For example, the phrase, "Money Back Guarantee" is an exaggerated description of the ten-day right to examine the policy and is not acceptable.

32. An advertisement which implies that a common type of policy or a combination of common benefits is "new," "unique," "a bonus," "a breakthrough," or is otherwise unusual is acceptable. Also, the addition of a novel method of premium payment to an otherwise common plan of insurance does not render it "new."

33. An advertisement which is an invitation to contract and which fails to disclose the amount of any deductible and/or the percentage of any co-insurance factor is unacceptable.

34. An advertisement which fails to state clearly the type of insurance coverage being offered is not acceptable.

35. Language which states or implies that each member under a "family" contract is covered as to the maximum benefits advertised, where such is not the fact, is unacceptable.

36. The importance of diseases rarely or seldom found in the class of person to whom the policy is offered shall not be exaggerated in an advertisement.

37. A television, radio, mail or newspaper advertisement which is designed to produce leads either by use of a coupon or a request to write to the company or a subsequent advertisement prior to contact must include information disclosing that an agent may contact the applicant if such is the fact.

38. Advertisements for policies designed to supplement Medicare or which are otherwise designed for issue to the elderly shall not employ devices which are designed to create undue anxiety in the minds of such persons. Such phrases as "here is where most people over 65 learn about the gaps in Medicare" or "Medicare is great, but .." or which otherwise exaggerate the gaps in Medicare coverage are unacceptable. Phrases or devices which unduly excite fear and dependence upon relatives or charity are unacceptable. Phrases or devices which imply that long sicknesses or hospital stays are common among the elderly are unacceptable.

39. An advertisement implying that the coverage is supplemental to Medicare, if it does not explain the manner in which it is supplemental to Medicare coverage, is not acceptable.

40. An advertisement for a policy designed to supplement benefits under Medicare is unacceptable if the advertisement:

a) fails to disclose in clear language which of the Medicare benefits the policy is designed to supplement and which of the Medicare benefits the policy is not designed to supplement or if it otherwise implies that Medicare provides only those benefits which the policy is designed to supplement;

b) describes the in-patient hospital coverage of Medicare as "hospital Medicare" or "Medicare Part A" when the policy does not supplement the non-hospital or the psychiatric hospital benefits of Medicare Part A (phrases to the effect of "the in-hospital portion of Medicare Part A" are acceptable);

c) fails to clearly describe the operation of the Part or Parts of Medicare which the policy is designated to supplement;

d) describes those Medicare benefits not supplemented by the policy in such a way as to minimize their importance relative to the Medicare benefits which are supplemented;

e) prominently displays a total benefit limit which would not, as a general rule, be payable for an average claim;

f) fails to clearly describe the operation of the Medicare Part A "lifetime reserve" (currently 60 days) and initial "benefit period" (currently 90 days) or fails to state that Medicare Part A provides benefits for psychiatric hospital confinement, where the policy supplements Medicare Part A.

41. Advertisements which employ fictitious narratives are unacceptable; however, hypothetical claims may be used to illustrate the operation of the policies advertised.

(2) No advertisement shall contain or use words or phrases such as, "all"; "full"; "complete"; "comprehensive"; "unlimited"; "up to"; "as high as"; "this policy will help pay your hospital and surgical bills"; "this policy will help fill some of the gaps that Medicare and your present insurance leave out"; "this policy will help to replace your income" (unless used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the term of the policy.

GUIDELINE 2536.2(a)(2)

This Subsection recognizes that certain words and phrases in advertising may have a tendency to mislead the public as to the extent of benefits under an advertised policy. Consequently, such terms (and those specified in the rule do not represent a comprehensive list but only examples) must be used with caution to avoid any tendency to exaggerate benefits and must not be used unless the statement is literally true in every instance. The use of the following phrases based on such terms or having the same effect must be similarly restricted: "pays hospital, surgical, etc., bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "replaces income" or "emergency paycheck." Other phrases may or may not be acceptable depending upon the nature of the coverage being advertised. For example, the phrase "this policy will help to replace your income" is acceptable in advertising for loss-of-time coverage but is unacceptable in advertising for hospital confinement (including "hospital indemnity") coverage.

This rule also prohibits words or phrases which exaggerate the effect of benefit payment on the insured's general well-being, such as "worry-free savings plan," "guaranteed savings," "financial peace of mind" and "you will never have to worry about hospital bills again."

Advertisements for policies designed to supplement Medicare benefits are unacceptable if they fail to disclose that no hospital confinement benefits will be payable for that portion of a Medicare benefit period for which Medicare pays all hospital confinement expenses, currently 60 days, other than the initial deductible, if the policy so provides. The length of said period must be stated in days.

(3) An advertisement shall not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "benefit builder," or stating "even pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

GUIDELINE 2536.2(a)(3)

Explanations must not minimize nor describe restrictive provisions in a positive manner. Negative features must be accurately set forth. Any limitation on benefits excluding pre-existing conditions also must be restated under a caption concerning exclusions or limitations, notwithstanding that the pre-existing condition exclusion has been disclosed elsewhere in the advertisement. (See Guidelines for Section 2536.2(c) for additional comments on pre-existing conditions.)

(4) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free"; "extra cash"; "extra income"; "extra pay"; or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

GUIDELINE 2536.2(a)(4)

The words, phrases, illustrations and concepts listed are illustrations of the words, phrases, illustrations and concepts prohibited by the Subsection which create the impression of a profit or gain to be realized by the insured when hospitalized.

Illustrations which depict paper currency or checks showing an amount payable are deceptive and misleading and are not permissible.

A hospital indemnity advertisement shall not include language such as "pay for a trip to Florida," "buy a new television" or otherwise imply that the insured will make profit on hospitalization .

An advertisement which uses words such as "extra," "special" or "added" to describe any benefit in the policy is unacceptable.

Although the Subsection prohibits the use of the phrase "tax free," it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of accident and sickness benefits. The IRS rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits and are not afforded the same favorable tax treatment as premiums for expense incurred hospital, medical and surgical benefit coverages. (Currently, Rev. Rul. 68-451 and Rev. Rul. 69-154.) Prominence either by caption, lead-in, bold-face or large type shall be given in any manner to any statements relating to the tax status of such benefits.

(5) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement unless such statements of such monthly or weekly benefit amounts are followed immediately by equally prominent statements of the benefit payable on a daily basis; for example, either of the following statements is acceptable: "$1,000.00 a Month ($33.33 a Day)" or "$33.33 a Day ($1,000.00 a Month)." When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

(6) No advertisement of a policy covering only one disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(7) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to, or substantially similar to the following: "THIS IS A LIMITED POLICY"; "THIS IS A CANCER ONLY POLICY"; "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY."

GUIDELINE 2536.2(a)(5) through 2536.2 (a)(7)

These Subsections are self-explanatory.

(8) An advertisement of a direct response insurance product shall not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan," or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.

GUIDELINE 2536.2(a)(8)
This Subsection should be applied in conjunction with Section 2536.7.

Phrases such as "we cut costs to the bone" or "we deal direct with you so our costs are lower" shall not be used.

(b) Exceptions, Reductions and Limitations.

(1) When an advertisement which is an invitation to contract refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

GUIDELINE 2536.2(b)(1)

The extent of disclosure required by this rule depends upon the type of advertisement. An institutional advertisement as defined in Section 2535.3(g) is not subject to this rule. An advertisement which is an invitation to inquire as defined in Section 2535.3(h) which mentions either the dollar amount of benefit payable and/or the period of time during which the benefit is payable must include a reference to the existence of exceptions, reductions and limitations in the manner required by Section 2535.3(h). An advertisement which is an invitation to contract as defined in Section 2535.3(i) must recite the exceptions, reductions and limitations as required by the rule and in a manner consistent with Section 2536.

If an exception, reduction or limitation is important enough to use in a policy, it is of sufficient importance that its existence in the policy should be referred to in the advertisement regardless of whether it may also be the subject matter of a provision of Insurance Code Sections 10350.1 through 10350.12 and 10369.2 through 10369.12.

Some advertisements disclose exceptions, reductions and limitations as required, but the advertisement is so lengthy as to obscure the disclosure. Where the length of an advertisement has this effect, special emphasis must be given by changing the format to show the restrictions in a manner which does not minimize, render obscure or otherwise make them appear unimportant.

(2) When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between

the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of the preceding paragraph shall disclose the existence of such periods.

GUIDELINE 2536.2(b)(2)

This Subsection imposes the same disclosure standards as the preceding paragraph with respect to policy provisions providing for waiting, elimination, probationary or similar time periods between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss. The comments under Subsection 2536.2(b)(1) are equally applicable to this Subsection. Where a policy has waiting, elimination, probationary or other such time periods, such provisions must be stated in negative terms. This requirement is comparable to that contemplated in Section 2536.2(a)(3) as to exceptions, reductions and limitations.

An advertisement for a policy designed to supplement Medicare benefits is unacceptable if it fails to disclose that no hospital confinement benefits will be payable for that portion of a Medicare benefit period, currently 60 days, for which Medicare pays all hospital confinement expenses other than the initial deductible, if the policy so provides. The length of said period must be stated in days.

(3) An advertisement shall not use the words "only"; "just"; "merely"; "minimum" or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "This policy is subject to the following minimum exceptions and reductions."

GUIDELINE 2536.2(b)(3)

This Subsection is similar to Section 2536.2(a)(3) and requires a fair and accurate description of exceptions, limitations and reductions in a manner which does not minimize, render obscure or otherwise make them appear unimportant.

Advertisements must state exceptions, limitations and reductions in the negative and must not understate any exception, limitation or reduction or qualify any exception, limitation or reduction to emphasize coverage described elsewhere (i.e., "Does not pay for _____,however, Medicare pays this" is not acceptable, nor is "Does not pay for the first four days in hospital for sickness,but pays for accident from first day"). (Underscoring indicates the manner in which statements are sometimes emphasized.)

This Subsection prohibits the use of any term, such as "just," "only," "merely," "necessary" or "minimum" to describe any exclusion, limitation, reduction or exception.

(4) When a group disability income insurance policy contains provisions which reduce the amount of maximum benefit payable, any invitation to contract for the policy as defined in Subsection 2535.3(i) shall contain an example of how at least two common reductions would reduce the dollar amount of the maximum benefit that an insured would receive. This example shall be placed in the part of the invitation to contract in which the maximum benefit amount is described, and shall be as prominent as the maximum benefit amount. The example may be coupled with a disclaimer which explains that the example is for purposes of illustrating the effect of benefit reductions and is not intended to reflect the situation of a particular claimant under the policy.

GUIDELINE 2536.2(b)(4)

This Subsection is designed to ensure that insurers will better explain the effect of benefit reductions, sometimes known as “offsets,” on the maximum benefit amounts set forth in their invitations to contract. It is not sufficient under subsection (4) to state the amount of the maximum benefit available under a policy without also showing, in a dollar amount example, how the maximum benefit amount might be reduced by at least two common reductions which are provided for in the policy. An example of how two common reductions would reduce the amount of the maximum benefit that an insured would receive is set forth below. The example assumes that the policy provides for a long term disability benefit payment of 60% of pre-disability earnings. This percentage may vary, depending on the terms of the policy.

Insured’s monthly predisability earnings	$3,000
Long term disability benefit percentage	x 60%
Unreduced maximum benefit	$1,800
Less Social Security disability benefit per month	- 900
Less state disability income benefit per month	- 300
Amount of long term disability benefit per month	**$ 600**

(c) Pre-Existing Conditions.

(1) An advertisement which is subject to the requirements of Section 2536.2(b) shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The term "pre-existing condition" without an appropriate definition or description shall not be used.

GUIDELINE 2536.2(c)(1)

This Subsection imposes the same disclosure standards with respect to pre - existing conditions provisions as noted in Guideline 2536.2(b)(1). The comments under that Guideline are equally applicable to this Subsection of the rules since the pre-existing conditions provision is an exception under the rules.

This rule implements the objective of Section 2536.2(a)(3) by requiring in negative terms a description of the effect of a pre -existing condition exclusion because such an exclusion is a restriction on coverage. The subdivision also prohibits the use of the phrase "pre -existing condition" without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time limit (such as a reduction from three years to two years or to one year) as an affirmative benefit. The words "appropriate definition or description" mean that the term "pre-existing condition" must be defined as it is used by the company's claims department.

(2) When a policy does not cover losses resulting from pre -existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specific policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

GUIDELINE 2535.2(c)(2)

The phrase "no health questions" or words of similar import shall not be used if the policy excludes pre-existing conditions.

Use of a phrase such as "guaranteed issue" or "automatic issue," if the policy excludes pre-existing conditions for a certain period, must be accompanied by a statement disclosing the fact in a manner which does not minimize, render obscure, or otherwise make it appear unimportant and is otherwise consistent with Section 2536.

(3) When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form shall contain a question or statement which reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows:

"Do you understand that this policy will not pay benefits during the first ___ year(s) after the issue date for a disease or physical condition which you now have or have had in the past?" [ ] YES;

Or substantially the following statement:

"I understand that the policy applied for will not pay benefits for any loss incurred during the first ___ year(s) after the issue date on account of disease or physical condition which I now have or have had in the past."

GUIDELINE 2536.2(c)(3)

This Subsection is self-explanatory.

Note: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code.